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Kerr, M. C.

Contested Election Cases

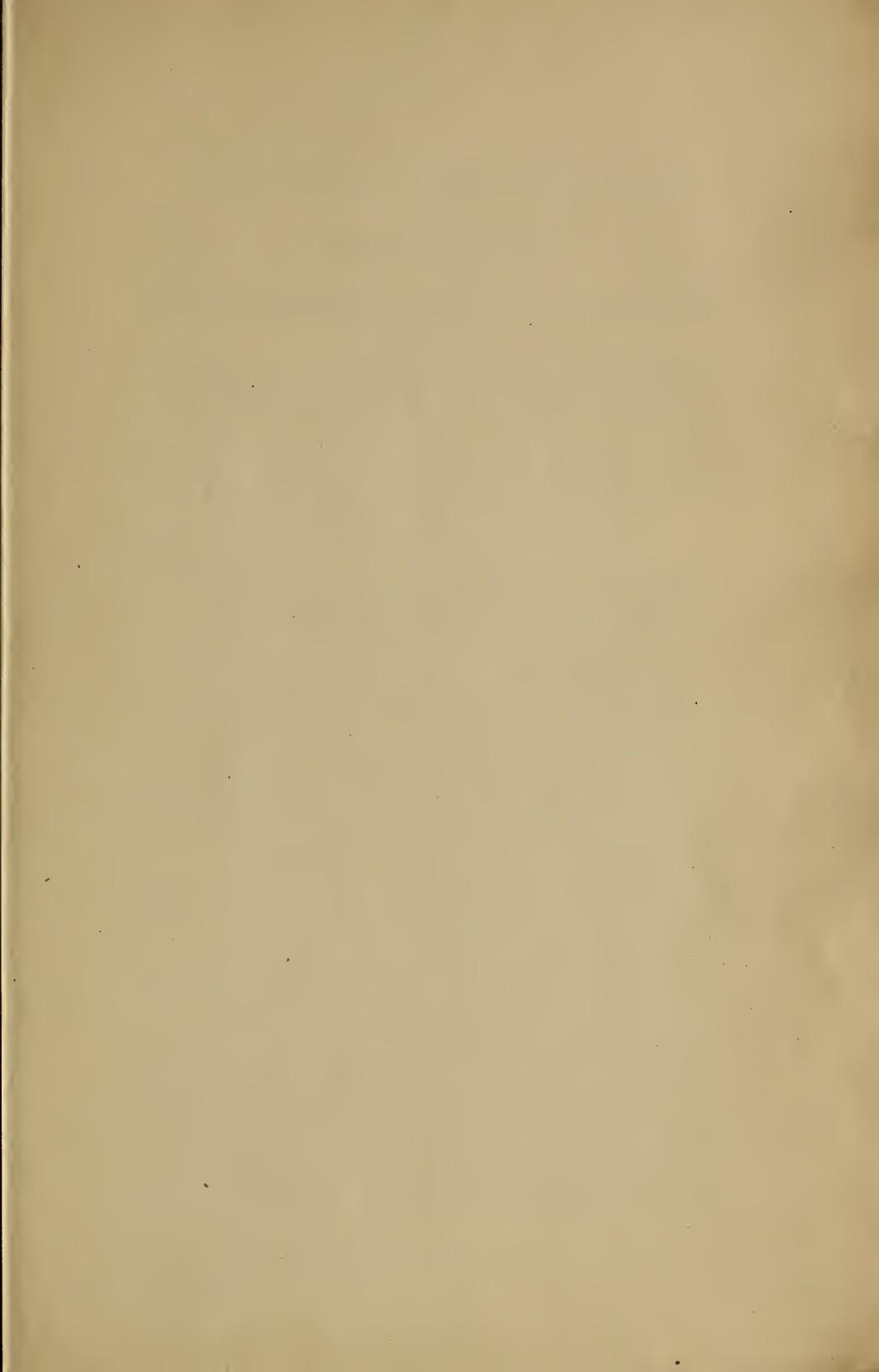
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# CONTESTED ELECTION CASES.

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## RADICAL

# Despotism and Usurpation.

A RADICAL CONGRESS STRIKES DOWN THE  
PRINCIPLE OF POPULAR REPRESENTATION.

The People Denied the Choice of their  
Representatives.

*255.7*  
By Hon. M. C. KERR, of Indiana,

*One of the Committee on Elections, House of Representatives.*

The true character and real *animus* of a dominant party cannot be better determined than by a careful inquiry into its conduct in election contests before Congress. In these cases its powers are supreme, its judgments are unalterable, except by itself; from its decisions there is no appeal, whether they are right or wrong, judicial or partisan, fair or corrupt. Under the Constitution "each House shall be the judge of the elections, returns, and qualifications of its own members." It is thus in the power of a reckless majority in Congress, by the mere force of numbers, under the exacting discipline of party, freed from the feeling of individual responsibility, and animated by a lawless thirst for power, to violate with impunity the rights of persons by excluding them from seats to which they have been legally elected; to override the rights and silence the voice of constituencies by denying them representation in the person of the choice of the majority; to render our system of popular elections a cheat and delusion, and to transfer political power from majorities to minorities. It must be perceived by every citizen

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that this is a dangerous and fearful power. The *letter* of the Constitution does not prescribe how, or in what spirit, it shall be exercised, but reason and justice do. It should be exercised with the utmost judicial fairness and impartiality. The politician, legislator, or statesman invested with such power, should become for the time the upright, severe, and incorruptible judge. No great party will habitually disregard or violate this clear and plain duty, unless it has become itself reckless, immoral, and corrupt, and loves power more than it does justice and law, and prefers rather to promote the selfish interests of its partisans than to protect the sacred right of representation and maintain the Constitution. In these views most fair and just men will readily concur.

Then let us inquire briefly into the history of parties in connection with these cases, and let the parties stand or fall by the record.

During the seventy-two years of our congressional history prior to March 4, 1861, the country was with fitful intervals mainly under the control of the great Democratic party, and of its ideas and policy. During that entire period, embracing thirty-six Congresses, the conduct of two great wars, and many of the most eventful crises in our national history, there arose only *one hundred and five* contests in the House of Representatives, or less than an average of *three* in each Congress or period of two years. These contests in the aggregate did not cost the people over \$150,000, including compensation to contestants and all incidental expenses to the Government. The trial of these cases was uniformly conducted with decent propriety and with deliberation, and decisions were made with general judicial fairness after free and reasonable discussion. The records of the House show that, in their adjudication, it was governed by legal rules and principles, not by mere arbitrary and partisan discretion, or by the shifting and inconsistent demands and necessities which always arise from such discretion.

But how is it changed since! Mark the difference! It is

most significant. It should startle the country. It betrays motives, character, demoralization. It demands change and reform. The Republican party came into power in the House March 4, 1861, less than ten years ago. Yet in that short period there have been *eighty-nine contests*, or an average of *eighteen contests* to each Congress. The aggregate cost to the people of all these controversies, in compensation to parties, in the expenses of itinerating election committees, in the printing of evidence or trash, and in other incidental expenses, will not fall short of *seven hundred and fifty thousand dollars!* How shall we account for this most remarkable change? Is it not the logical and bitter result of the vicious general policy and conduct of Radicalism? Are not these simple and incontrovertible facts pregnant with severest condemnation of that party?

But this alarming multiplication of contests, and their unparalleled expense to the people are by no means the only or greatest evils resulting to the country from their existence. Their chief injury is done to our institutions and to the public morals. In their adjudication by the House, even the outward forms of decent judicial deliberation have been in great part discontinued. They are nearly always decided upon thinly disguised partisan considerations. The rules and principles of law justly applicable to such cases, and the respectable precedents in the judicial and legislative records of the country, are alike disregarded. Fair and voluntary popular majorities, no matter how large or triumphant, are brushed aside as of no value upon some pretext afforded by mere technicality, or some vague or frivolous allegation made by a desperate partisan who relies upon the numerical power of his political friends in the House to sustain him.

Thus corrupt partisans, bad men, mere worthless adventurers, are directly encouraged by their Republican friends in the House to get up contests and claim seats to which they are not elected, and oppose the admission of legally elected Democrats upon scandalously insufficient grounds.

both of fact and law. Very often, and sometimes even to their own surprise, they are sustained, in violation of the law and the right, and at the expense of decency and the self-respect of the House. Many times, even when seats are refused them, they are allowed to prevent the admission of Democrats to the seats to which they are chosen—sometimes until the Congress has well nigh expired, and sometimes prevent their admission entirely. All of these worthless, baseless, *prospecting* cases, are gotten up by political friars of the majority in the House. The few contests brought up by Democrats are fair and ordinary contests, or cases in which reckless or partisan Republican officials in the States have, in defiance of the law, given certificates of election to their political friends, as in the cases of Switzler against Dyer, from Missouri, and Reid against Julian, from Indiana, in the present House. Both Switzler and Reid, Democrats, were duly elected by clear majorities, and both were denied certificates of election by Republican State officials, contrary to law, and certificates were given to Dyer and Julian in defiance of law, who thus gained admission to the seats, and obtained the advantages for corrupt combinations afforded by possession, and at length were confirmed in the seats by the arbitrary orders of the House. In this way violence is done to one of the most cherished and vital principles of our Government—the right of representation; gross wrong is done to the personal rights of members elected by Democrats, mere political adventurers are admitted to seats, whereby the House becomes in considerable part self-constituted, and ceases to be a Congress elected by the people, or to express the sentiments or obey the wishes of the intelligent and virtuous people of the country.

These great evils long since became so apparent that many of the more fair and independent members of the Republican press felt called upon to denounce them and to demand reform; but their demand is unheeded, and the evil increases. Sometimes they are condemned also by individ-

ual Republicans. To the opinions of one of these of great ability and distinction, it is proper to refer in verification of what has just been stated. On October 26, 1869, a paper was read before the "American Social Science Association," at New York, by Hon. Henry L. Dawes, [Radical,] of Massachusetts, who has been a member of the House for fourteen years, and was himself many years Chairman of the Committee on Elections, in which he uses the following language on the general subject of contested elections:

"All traces of a judicial character in these proceedings are fast fading away, and the precedents are losing all sanction. Each case is coming to be a mere partisan struggle. At the dictate of party majorities the Committee must fight, not follow, the law and the evidence; and he will best meet the expectations of his appointment who can put upon record the best reasons for the course thus pursued. This tendency is so manifest to those in a situation to observe, that it has ceased to be questioned, and is now but little resisted. *There is no tyranny like that of majorities,* and the efforts in the past to resist them, and to hold the judgments of the Committee of Elections up above the 'dirty pool of party polities,' have encountered such bitter and unsparing denunciation, and such rebuke for treason to party fealty, that they are not likely often to be repeated. *The fruit that follows such seed is too certain for doubt.* The whole proceeding must sink into contempt. Self-respect as well as legal attainment will soon retire from service upon a committee required, in the name of law and under the cloak of judicial sanction, to do the work of partisans."

Mr. Dawes further says:

"When political ends are to be gained through the forms of a contested election there will be no lack of material or disposition; and nothing more certainly attests the prostitution of this tribunal, or is more justly calculated to awaken apprehension, than the astonishing increase of the number of contests within the last few years. Another fact disclosed by this record finds no other explanation than is here given. *Those with the minority in Congress [Democrats] seldom contest.* A belief that the court is packed with a ruling majority, and has its work to do, tells plainly enough upon the number and political affiliations of contestants, vastly increasing

their number from the one side, and in like manner diminishing the list from the other."

These statements, made by so distinguished a Republican, are not more startling in themselves than their utterance is creditable to his boldness. That his own conduct, during his long service on that committee and in the House, was very seldom at variance with that of his political friends, the imperious and tyrannical Republican majority, is perhaps due to the very facts which he has given. He may be accepted as stating at once the reasons for his past conduct and his excuse for doing no better in the future when he says: "There is no tyranny like that of majorities, and the efforts in the past to resist them, and to hold the judgments of the Committee of Elections up above the dirty pool of party politics, *have encountered such bitter and unsparing denunciation, [from Republicans,] and such rebuke for treason to party fealty, that they are not likely often to be repeated.*"

The people should remember that such conduct never disgraced our institutions, or the House of Representatives, until after the ascendancy of Radicalism. It is the logical outgrowth of the policy and conduct of that party. The only effective remedy, therefore, will be found in the repudiation of both the party and its corrupting policy. If, in important matters of this kind, so directly affecting the safety of our institutions, the individual members of the Republican majority have become as mere cogs in a great wheel, and have lost all individuality and manly independence of action, and have no will or power to resist the unjust decrees of a reckless and lawless majority, all just men will agree that it is time they were left at home, and others were entrusted with these important duties. This is the condition of the Radical party to-day. Its bad elements control its actions and shape its practical policy.

Out of the partisan, cruel, and revolutionary policy of reconstruction, some of the greatest and most corrupting evils of this day have come upon our country. In nothing

is this more impressively true than in the matter of contested elections. Republican policy in the South has been a nursing-mother for a brood of the meanest and most worthless political adventurers, who have given bad governments and evils without number to the people of the South, and have done dishonor to the Republican party, Congress, and the country, by the baseless and shameless contests they have put upon the records of the House. They devise all sorts of pretexts, of general, vague, and frivolous charges of intimidation or violence, and of personal disloyalty in Democratic members elect, and attempt to sustain them by mere trash, hearsay, rumors, *ex parte* statements, and shadowy partisan slang. For example: In the State of Louisiana are five Congressional Districts, every one of which was triumphantly carried by the Democratic party on November 3, 1868, in the election of members of Congress, the majorities of the Democratic candidates being as follows:

Louis St. Martin .....	12,327
Caleb S. Hunt .....	10,615
Adolphe Bailey .....	8,931
Michael Ryan .....	5,988
Geo. W. McCraine.....	5,684

Yet not one of these gentlemen was admitted to his seat in the House; and three of the Republican claimants were admitted in gross violation of law and decency, and the other two seats were declared vacant. Minority candidates, in utter contempt of the fundamental right of the majority to determine representation, were permitted by the Republican House to occupy seats in Congress. The same thing was done in other cases from other States. Numerous cases might be mentioned in detail to illustrate the truth of these remarks; but it is unnecessary. The facts are notorious. All these outrages have been committed without even the poor excuse that the Republican majority in the House was small, and demanded to be increased by every practicable means. For ten years past it has been complete and over-

T. F. H.

whelming. These great wrongs have, therefore, had no excuse or palliation, and simply evince the reckless, proscriptive, and intensely partisan character of the machinery by which the Republican party is controlled. They appeal to all just and fair men, as they regard free institutions, fair and equal laws, the purity of legislation, the importance of moral character and personal integrity in the representative, and the content and peace of the country, to rebuke such infamous conduct, and defeat the party that is alone responsible for these things.

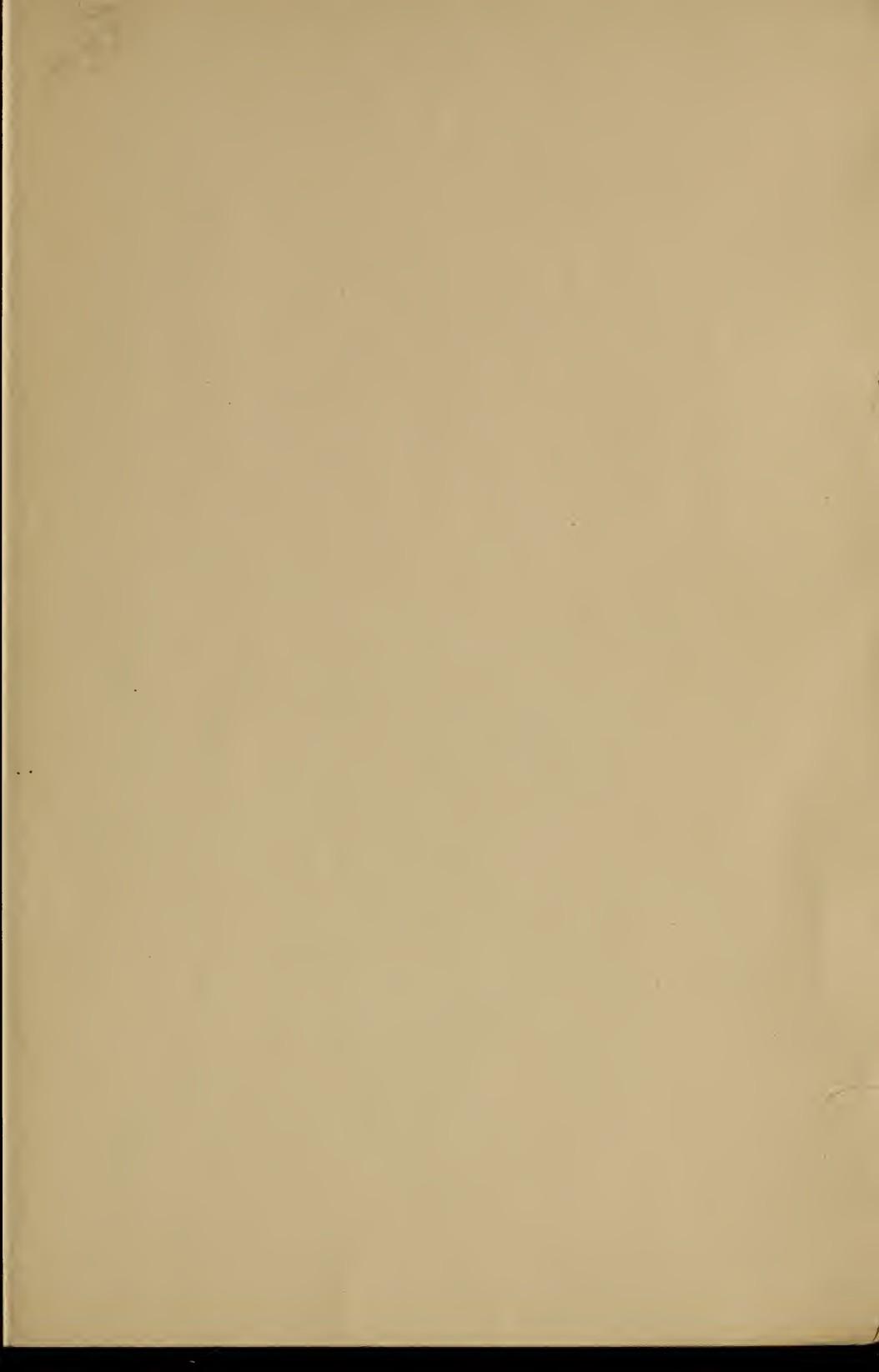
The value of elective government is gone if the fairly expressed will of the electors can be habitually defeated and defied by an arbitrary majority in Congress. This has been done in numerous cases during the last ten years. The *New York Tribune* of the 13th of June last, referring to and confessing these wrongs, said :

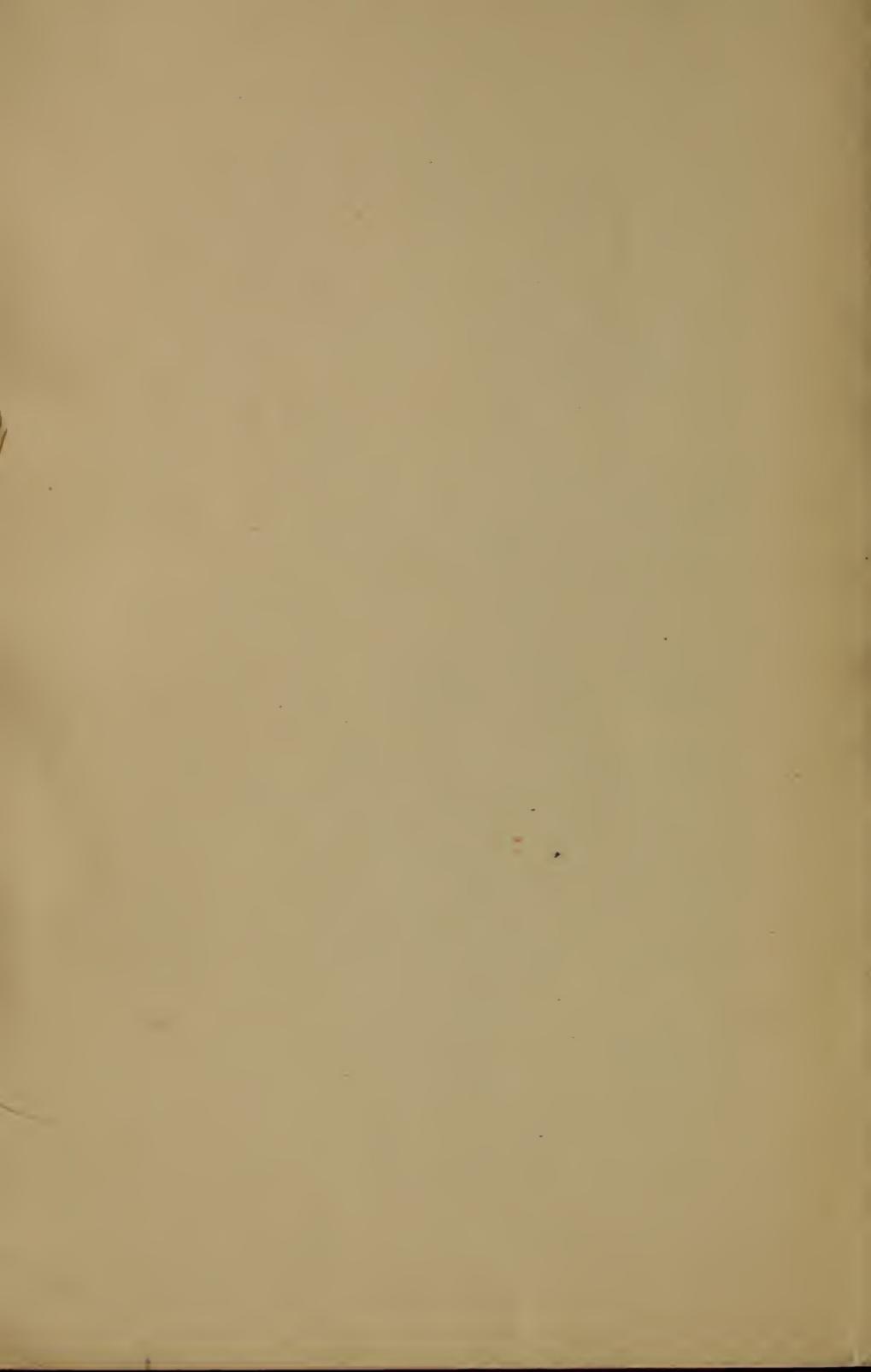
"We tell gentlemen that we have had fully as much of this sort of thing as we can stand. We utterly and vehemently protest against assuming any more party responsibilities in behalf of carpet-bag Congressmen."

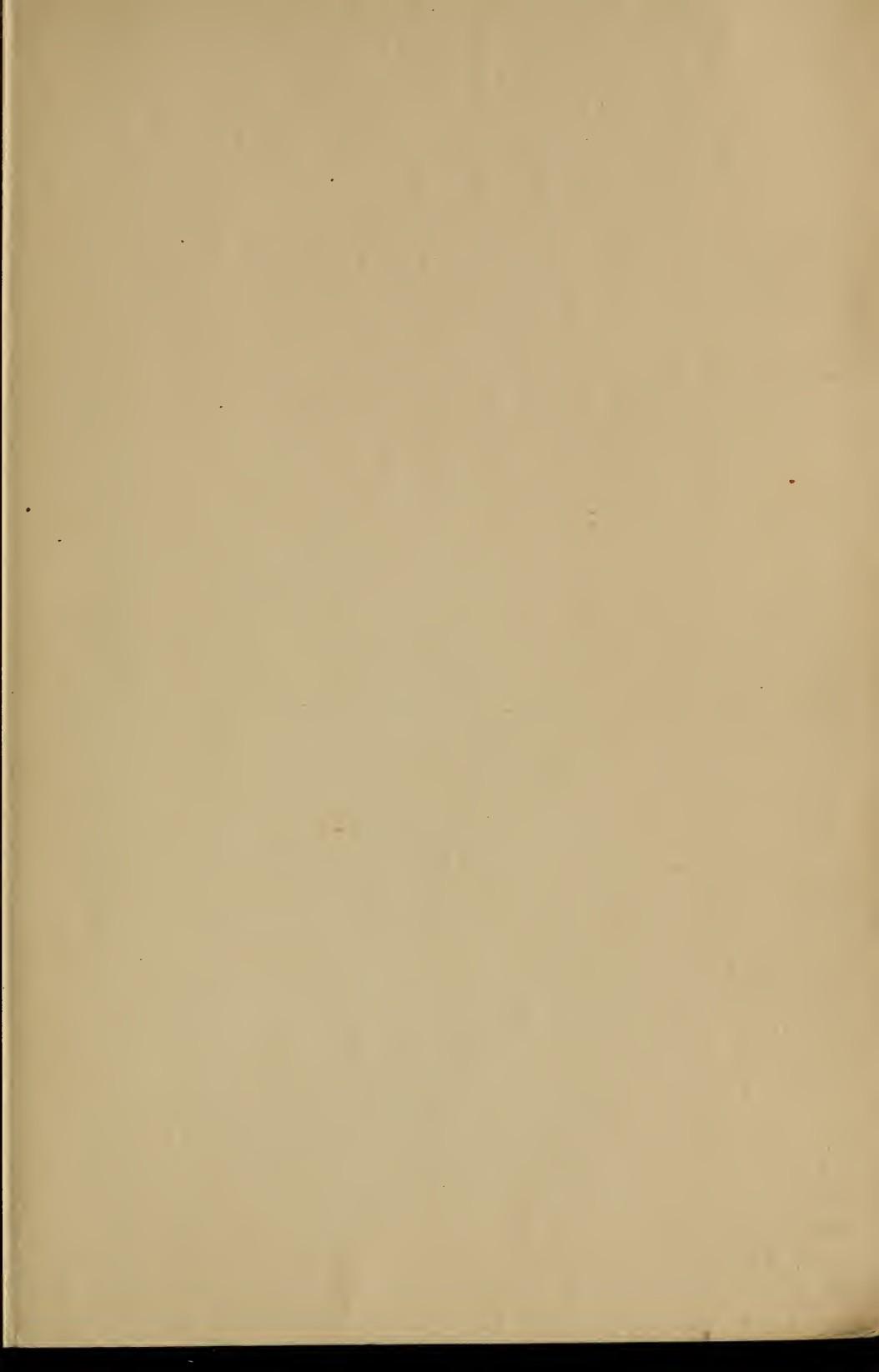
But the voice of the press, the conceded disgust of good men throughout the country, the earnest appeals and remonstrances of the Democratic minority in Congress, are alike powerless to stop these wrongs. The remedy must come from the people in a change of representatives. We appeal, therefore, to them to arouse to a full sense of their duty in this behalf, and see to it that the next Congress shall be composed of more faithful servants than the present majority.

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